Remarks

This Response is considered fully responsive to the Office Action mailed February 19, 2009. Claims 1-30 were pending in the application. Claims 1-30 stand rejected. In this Response, claims 1, 5, 6, 8-10, and 16-30 are amended, no claims are cancelled, and no new claims are added. Claims 1-30 are now pending in the application. Reexamination and reconsideration are requested.

Claim Amendments

Independent claims 1 and 16 are amended to incorporate some aspects of material found at least on page 80, lines 3-9 of the Specification.

Dependent claims 5, 6, and 8-10 are amended to recite proper antecedent basis from amended independent claim 1. Similarly, dependent claims 20, 21, and 23-25 are amended to recite proper antecedent basis from amended independent claim 16.

Claims 16-30 are amended to recite a Beauregard claim format.

Rejection Under 35 U.S.C. § 102

The Office has rejected claims 1, 4, 5, 8-11, 14-16, 19-20, 23-26, and 29-30 under 35 U.S.C. §102(e) as being anticipated by Jantz et al., U.S. Patent No. 6,457,677 (hereinafter "Jantz"). The Applicants respectfully traverse the rejection for at least the following reasons. The Applicants have amended independent claims 1 and 16 to incorporate some aspects of material found at least on page 80, lines 3-9 of the Specification. As such, the Applicants respond to the Office's rejection of claims 1 and 16 with reference to the novelty of the aforementioned material, specifically, "a performance characteristic of said first procedure outside of predefined acceptable bounds during execution", which is recited in claims 1 and 16 as presently amended.

Jantz generally teaches "methods and associated systems using probabilistic methods for selecting among a plurality of diagnostic procedures to recover from an error condition in a managed device" [Abstract]. Examples of the error condition taught in Jantz include; drive failure, communication channel failure, channel interface/device failure, drive enclosure failure, and any combination of the above failures. [Col. 8, Lines 10-20]. Notably, all the example error conditions provided in Jantz are various failures.

Claim 1 as presently amended recites in part, "a second procedure which <u>monitors</u> said execution of said first procedure for a <u>performance characteristic</u> of said first procedure <u>outside of predefined acceptable bounds during execution</u> . . ." (emphasis added). The Office asserts that "[w]hen an operation stops operating (e.g., fails), at least one performance characteristic of the operation can be said to be zero." While the Office's statement is not inherently wrong, the Applicants respectfully disagree that Jantz teaches <u>monitoring execution</u> of the first procedure for a performance characteristic <u>outside acceptable bounds</u>. Since Jantz performs error recovery in response to a failed operation, Jantz monitors for the failed operation rather than execution of the operation outside predefined bounds. As a result, Jantz does not "monitor execution of the first procedure"; rather Jantz monitors failure of a procedure.

An example performance characteristic is efficiency of memory use. As illustrated in FIG. 12, execution of the first procedure is monitored for efficiency of memory use. If the memory use moves outside acceptable bounds (e.g., is inefficient to perform an operation at a desired rate), a series of remedial actions are taken to resolve the memory inefficiency. Conversely, Jantz merely monitors for a failure and performs a recovery procedure to resolve the failure.

Regarding claims 8 and 23, the Office also asserts that "[t]here is no requirement as to what constitutes a 'threshold level,' how the performance characteristic is determined, or even that the threshold level has been defined. Further, the Office asserts there is no requirement as to what constitutes a 'performance characteristic.'" The Applicants respectfully disagree.

Initially, while included in the rejection under 35 U.S.C. §102, this appears to be a §112 written description rejection. However, the Applicants respectfully point out that a "performance characteristic" has meaning to one of ordinary skill in the art in automated data processing technology. Further, the Applicants point the Office to at least FIG. 12 and related detailed description (e.g. page 80, lines 3-9 of the Specification) describing "efficiency of memory use" in support of the claim term "performance characteristic" and "acceptable bounds" as an example threshold.

Therefore, reconsideration and withdrawal of the rejections of independent claims 1 and 16 is respectfully requested. Further, claims 2-15, and 17-30 depend from claims 1 and 16 and thus, are believed to be allowable for at least the same reasons. As such reconsideration and withdrawal of the rejections of claims 1-30 is respectfully requested.

Rejection Under 35 U.S.C. § 103

The Office has rejected claims 2-3 and 17-18 under 35 U.S.C. §103(a) as being unpatentable over Jantz. The Applicants respectfully traverse the rejection for at least the following reasons. The Applicants reassert the arguments set forth above with respect to the anticipation rejections of independent claims 1 and 16. Claims 2-3 and 17-18 depend from claims 1 and 16 and thus, are believed to be allowable for at least the same reasons. Reconsideration and withdrawal of the rejections is respectfully requested.

Rejection Under 35 U.S.C. § 103

The Office has rejected claims 6-7, 12-13, 21-22, and 27-28 under 35 U.S.C. §103(a) as being unpatenable over Jantz in view of McLaren, et al., U.S. Patent No. 6,393,584 (hereinafter "McLaren"). The Applicants respectfully traverse the rejection for at least the following reasons. McLaren is relied on by the Office to teach resuming activity from the point at which it was interrupted. The Applicants respectfully disagree and submit that McLaren does not cure the deficiencies in Jantz. The Applicants reassert the arguments set forth above with respect to the anticipation rejections of independent claims 1 and 16. Claims 6-7, 12-13, 21-22, and 27-28 depend from claims 1 and 16 and thus, are believed to be allowable for at least the same reasons. Reconsideration and withdrawal of the rejections is respectfully requested.

Extension of Time

The Applicants hereby petition for a 3-month extension of time and the accompanying fee is submitted herewith. The Applicants believe no other fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this a request therefor and authorization to charge Deposit Account No. 50-3199 as necessary.

Conclusion

Claims 1-30 are currently pending in the application. The Applicants have fully responded to each and every rejection in the Office action dated February 19, 2009 and believe that claims 1-30 are in condition for allowance. The Applicants therefore request a timely Notice of Allowance be issued in this case.

If the Office should require any additional information or believes any issues could be resolved via a telephone interview, the Office is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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Date

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